Packet Co. v. *McCue*, 17 Wall. (U. S.) 508. For this reason the fact that the plaintiff had broken his contract is not here material. In any event such an employee could only demand to be taken up when reasonably convenient, in view of other mine operations — but this was the fact in the principal case.

ILLEGAL CONTRACTS — EFFECT OF ILLEGALITY — DEFENSE TO PURCHASER UNDER CONTRACT FOR ILLEGAL SALE. — The defendant agreed to buy "renovated" butter of the plaintiff, under a contract calling for a series of shipments. The evidence justified the inference that title would pass outside the jurisdiction at the time of shipment. After accepting and paying for several consignments, the defendant refused to receive any further deliveries. In an action on the contract, the defendant set up the failure of the plaintiff to mark his shipments in compliance with a local statute providing that "No person, etc., shall manufacture, sell, or offer for sale, or have in his possession with intent to sell butter known as process butter, unless the package in which it is sold is marked 'renovated butter.' All process butter shipped from other states shall be subject to the same regulations." (2 REM. & BAL. WASH. CODE, § 5447 e.) *Held*, that the plaintiff may recover in spite of the statute. *Armour & Co.* v. *Jesmer*, 136 Pac. 689 (Wash.).

The result is unimpeachable on the facts of the case. The contract would be performed in a jurisdiction beyond the operation of the statute. *Braunn* v. *Keally*, 146 Pa. 519, 23 Atl. 389. The statute makes illegal the selling and the possession with intent to sell, but says nothing as to a shipment into the state in pursuance of a sale. But, if the court is correct in assuming that the shipment of misbranded butter would be covered by the statute, it would seem that the plaintiff should not recover. There would have been no recovery for the price if the sale had been effected in the unlawful manner. *Forster* v. *Taylor*, 5 B. & Ad. 887; *Pray* v. *Burbank*, 10 N. H. 377. And the previous method of shipment overcomes the presumption that he would choose the lawful course sufficiently to justify the defendant in refusing to proceed. But the court reasons that the defendant may not have the benefit of this defense as to that portion of the contract which remained executory, because notice was not given in time to enable the plaintiff to perform lawfully. If the defense proceeded on the idea of relief to the defendant, this position would be tenable. But a defense constituted primarily for the benefit of the public is not forfeited in this way. See *Church* v. *Proctor*, 66 Fed. 240, 244. It is therefore submitted that if the statute covered the matter, the defendant was under no duty to receive the goods for the refusal of which action was brought. *Buxton* v. *Hamblem*, 32 Me. 448. See *Gallini* v. *Laborie*, 5 Durnf. & East 242.

INTERNATIONAL LAW — LEGATIONS AND DIPLOMATIC AGENTS — IMMUNITY OF DIPLOMATIC AGENTS FROM SUITS: WHETHER WAIVED BY UNCONDITIONAL APPEARANCE. — The defendant, an attaché of a foreign legation in England, had entered an unconditional appearance in a civil action regarding an undertaking in his private capacity. It did not appear that the defendant knew of his privilege of exemption from suit. *Held*, that the privilege was not waived by appearing. *In re Republic of Bolivia Exploration Syndicate*, 30 T. L. Rep. 78 (Ch. Div., Nov. 12, 1913).

It has long been a settled rule of law that foreign diplomatic representatives are exempt from all local processes in the country to which they are accredited. 1 KENT'S COMMENTARIES, 15, 38. The same immunity is given not only to an ambassador himself, but to his subordinates, family, and servants as well. See *Respublica* v. *De Longchamps*, 1 Dall. (Pa.) 120, 125; 1 HALLECK, INTERNATIONAL LAW, 354. It extends so far that the local law does not punish the ambassador, even when he conspires against the sovereign to whom he is accredited. See 1 WESTLAKE ON INTERNATIONAL LAW, 266. Whether or not

a violation of duty to the sovereign who sends him, participation in business ventures outside the official duty does not render the envoy liable to civil suit. *Magdalena, etc. Co.* v. *Martin*, 2 E. & E. 94. The court in the principal case found that the defendant had not waived his immunity as a foreign diplomat, raising, but not squarely deciding, the interesting point whether or not he could have waived it. That an unconditional appearance does constitute a waiver seems to be the decision in *Taylor* v. *Best*, 14 C. B. 487. (But see the *dictum* apparently *contra* in *Barbuit's Case*, Cas. t. Talb. 281, 282.) See also 1 RIVIER, PRINCIPES DU DROIT DES GENS, 495, 496. It is submitted, however, that there should be no waiver, express or implied, without permission of the envoy's sovereign. It is the sovereign's business that the representative is sent abroad to do. One purpose of the privilege is that the business shall not be interfered with by local restrictions. See *Barbuit's Case*, *supra*, 282. Furthermore, it would also hazard a sovereign's dignity if his ambassador, even through his own volition, could place himself under temporary allegiance to a foreign power. See *Schooner Exchange* v. *M'Faddon*, 7 Cranch (U. S.) 116, 138. The ambassador should not be allowed to waive the privilege which attaches to the office, rather than to him as a person. Such waiver is forbidden American diplomats. See 4 MOORE'S INT. LAW DIGEST, 631. French authority supports the view suggested. *Dalloz*, 1907, 2: 281. See DESPAGNET, DROIT INTERNATIONAL PUBLIC, 3 ed., 258. There are *dicta* of American courts to the same effect. See *United States* v. *Benner*, 24 Fed. Cas. 1084, 1087; *Valarino* v. *Thompson*, 7 N. Y. 576, 579.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — JUDGMENT FOR DAMAGES TO PERSON AS BAR TO RECOVERY FOR DAMAGE TO PROPERTY. — By a contract of insurance, the owner of an automobile had agreed to assign to the plaintiff all rights for damage thereto. Both the automobile and the owner were injured by the same negligent act of the defendant. The owner having recovered damages for the injury to his person, the insurance company now sues for the injury to the automobile. *Held*, that the action may be maintained. *Underwriters at Lloyd's Ins. Co.* v. *Vicksburg Traction Co.*, 63 So. 455 (Miss.).

By the weight of American authority, one tortious act injuring a man as to his person and property gives rise to only one cause of action, with damage for two different sorts of injury; and judgment for the one injury bars a subsequent action for the other. *King* v. *Chicago, M. & St. P. Ry. Co.*, 80 Minn. 83, 82 N. W. 1113; see cases collected 50 L. R. A. 161. Under this doctrine the owner in the principal case would have been precluded from bringing any action for the injury to his property. Since an assignee can have no greater right than his assignor (*Savannah Fire & Marine Ins. Co.* v. *Pelzer Manufacturing Co.*, 60 Fed. 39), the plaintiff's action must be equally precluded. The court, however, purporting to accept the American doctrine, bases it entirely upon a policy which prevents a plaintiff vexing a defendant with two suits when one would suffice, and holds this policy inapplicable where the suits are brought by different parties. By thus restraining the operation of the doctrine that there is but one cause where the same act produces two kinds of damage, the court attains a most desirable result. But it would seem equally expedient and sounder on theory to accept the English view acknowledging the existence of two causes of action (see *Brunsden* v. *Humphrey*, 14 Q. B. D. 141; 24 HARV. L. REV. 492), but to limit its application by the policy that where one action suffices, a plaintiff may sue but once although two dissimilar rights are injured.

LAW AND FACT — PROVINCES OF COURT AND JURY — WHETHER LOGICAL CONNECTION A PRELIMINARY QUESTION OF FACT FOR COURT. — The plaintiff was injured by a defective appliance furnished by the defendant, his employer.